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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,788	01/16/2004	Thomas T. Yamashita	YAMA-009	8159

24353 7590 03/26/2007  
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EAST PALO ALTO, CA 94303

EXAMINER
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LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1615

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/26/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/759,788	<b>Applicant(s)</b> YAMASHITA, THOMAS T.	
	<b>Examiner</b> NEIL LEVY	<b>Art Unit</b> 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 December 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-8,10,11,13,14 and 16-37 is/are pending in the application.
- 4a) Of the above claim(s) 21-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10,11,13,14 and 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1,3-8,10,11,13,14 and 16-37 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Election/Restrictions***

Claims 21-37 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention & species, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on 1/23/06.

#### ***Claim Rejections - 35 USC § 112***

All claims stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

INORGANIC COMPOUNDS is not limiting, as copper hydroxides for example, are inorganic, but neither is, NATURALLY OCCURRING, as botanicals & antibiotics, carbamates, imides, strobilurines & so on are naturally occurring.

#### ***Claim Rejections - 35 USC § 102***

Claims 1,3-5, 7,8,11, 17 -19 are rejected under 35 U.S.C. 102(b) as being anticipated by Spengler et al -US006669879B1

***Disclosed are pesticide compositions of chemical pesticides & crop treatment agents vitamins & minerals,***

***(col. 6, lines 3-18,24-line 24, col. 7) ,with0.2-20% carbon skeleton-sucrose, fats(col. 7 lines 40-60), co factors , not identified in instant claims), such as***

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***succinic acid, bile acid & sterols (col. 8, lines 12-13), & minerals, & trace minerals, the instant macro & micro nutrients (as dicalcium phosphate –col. 4, line 24, & col. 6, lines 6-16) which also meet the instant micro & macro nutrient requirement, not otherwise specified in the claims. Complexing agents can be considered to be lecithins, @ 0.1-3% (col. 7, lines 58-60).***

***Claim Rejections - 35 USC § 103***

Claims 1,3-8,10,11,13,14,16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spengler et al 6669879 and McCoy-5453277.

***Spengler (above) provides the instant invention, but leaves it to the artisan to determine desired specific macro, micro & energy source nutrients & co factors & their amounts. McCoy also provides plant treatment agents , & shows the Spengler minerals- those well known in the art(col. 2) Mn, Zn, B---with molasses, sucrose, fructose(col. 3, lines 36-col. L4, lines 9) and macro nutrients, Mg (col. 7).***

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, desiring to utilize pesticidal compositions, to use one of those well known in the art, as exemplified by the primary reference, with selection of the added nutrient concentration effective ingredients in order to control pests while also fertilizing.

Claims 1,3-8,10,11,13,14, & 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Summers-3514516 in view of Beaty-5634959 , Kinnersley et al 4976767, Wahlberg-3231365, Van Barneveld US006254654B1

Summers provides nematocidal & fungicidal compositions to soil, with reduction in phytotoxicity (col. 2, 7 col. 4- formulations) & include the instant sodium aluminofluoride (col. 7). Application with other pesticides & soil amendments is acknowledged (col. 9, top), but not exemplified.

Beaty is one example of a fertilizer formulation applicable with Summers- Beaty provides EDTA complexer, macro ( Mg)& micro (Mn) mineral nutrients & sources of energy & vitamins & cofactors, -fish solubles & seaweed (summary, col. 4, & claim 1) .

Kinnersley also provide suitable fertilizer combinable with Summers, as liquid or solid (col. 3, lines 17-31, 48-51) steepwater (col.2 ) containing the instant energy source, with amino acid & sugar carbon skeletons, K, phosphate, complexing agent-phytic acid(col. 4, lines 11-43) with added nutrients, N.

Wahlberg also describes fertilizers to be added to soil, & formulated with other fertilizers(col. 2, lines 30-+) & include statements that the required nutrients & amounts are known & depend upon the crop of concern. These include N sources, P, K, C a,Mg,S, Na, C, H, O & (col. 3, top) B. These are the instant macro & micro nutrients; Energy sources include seaweed, animal meals vegetable oils (col. 3, lines 42-50).

Van Barneveld also describes fertilizers to be added to soil with other agents & fertilizers ; these include macro & micro nutrients depending upon the crops of

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concern(col. 9, lines 15- 180, manure, P, S,K (col. 10, lines 28-68). Further adjuvants include the instant cofactor, Yeast(col. 6, llines 26-33) & sugars-molasses.

Summers (above) shows the instant invention, but not specifically with amendments or fertilizer ingredients specified, such as the molasses , macro & micro nutrients & co-factors as instantly claimed. However, Summers says to combine with fertilizers, & these are shown as combinable, in the secondary references.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, desiring to utilize pesticide/fertilizer compositions, to use one of those well known in the art, as exemplified by the primary references, with selection of the specific nutrient-fertilizer components as are well known in the art, & shown to be selected in amounts as desired as a function of the crop of concern.

All the critical elements of the instant invention are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular pest species and crop interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

Applicant has not provided any objective evidence of non-obvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not a basis for patentability.

### ***Response to Arguments***

Applicant's arguments filed 12/21/06 have been fully considered but they are not persuasive. Applicant argues the prior art provides no motivation to combine ; the now cited references, & Summer do provide the motivation – they each state that nutrients/fertilizers can be added to or formulated with , the referenced plant or soil

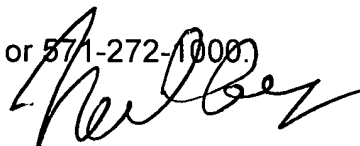
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amendment or pesticide , & also that the particular nutrient & amount is art known, & depends on the plant of concern. Thus, we see the invention as it is claimed as art recognized, as the various nutrients are formulated in amounts in which they would be expected to be formulated in order to be used to do what they would be expected to do, & therefor are not of patentable weight. .

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



NEIL LEVY

NEIL S. LEVY  
PRIMARY EXAMINER